UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD WASHINGTON, D.C.

In the Matter of:

CLIFF HOUSE SENIOR LIVING, L.P., d/b/a RESIDENCES AT CHESTNUT RIDGE,

Employer,

and

DISTRICT 1199C, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, AFSMCE, AFL-CIO,

Petitioner.

CASE NO. 04-RC-080782

EMPLOYER'S STATEMENT IN OPPOSITION TO REQUEST FOR REVIEW OF DISTRICT 1199C, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, AFSCME, AFL-CIO

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I. <u>STATEMENT OF PROCEDURE</u>

These proceedings arise out of a representation election conducted by Region 4 of the National Labor Relations Board ("the Board" or "NLRB") involving certain employees of Cliff House Senior Living, L.P., d/b/a Residences at Chestnut Ridge ("Center" or the "Employer") and 1199c, National Union of Hospital and Health Care Employees, AFSMCE, AFL-CIO ("the Union"). The parties stipulated to a unit which consisted of "[a]ll full-time and regular part-time certified and non-certified nursing assistants, caregivers, care associates, medical technicians, activities aides, dietary employees, including waiters and waitresses, housekeeping employees and maintenance employees employed by the Employer at its 2700 Chestnut Street, Chester, Pennsylvania Center."

The election and tally of ballots was conducted by Region 4 of the NLRB on June 21, 2012. At the conclusion of the election, it was memorialized that a majority of the valid votes had been cast against the Union. On June 27, 2012, the Union filed five objections. On July 12, 2012, the Regional Director issued an Order directing a hearing on the Objections, finding that the objections raised substantial and material issues of fact. Pursuant to the Regional Director's order, on August 2, 2012, the Board held a hearing in Philadelphia, Pennsylvania.

On September 14, 2012, the Hearing Officer issued the Report and Recommendation of Objections to Election recommending that all of Petitioner's objections be overruled. On September 28, 2012, Petitioner mailed its Request for Review to the National Labor Relations Board for consideration.²

¹ The parties entered into a stipulated election agreement on May 24, 2012. The Board approved the election agreement on May 25, 2012.

² Petitioner served Employer with a copy of its Request for Review via U.S. Mail with a cover letter dated September 28, 2012. However, Employer's counsel did not receive its service copy until the afternoon of Thursday, October 4, 2012. Notwithstanding Petitioner's gamesmanship, Employer is submitting its Statement in Opposition within seven (7) days of the date of Petitioner's Request for Review in compliance with the Board's regulations.

II. STATEMENT OF THE CASE

The instant Request for Review is the Union's attempt to avoid the results of the June 12, 2012 election held at the Center in Chester, Pennsylvania by challenging the Hearing Officer's Report and Recommendation which was true to the record and Board precedent. The Hearing Officer properly held that the Employer did not engage in objectionable conduct. Specifically, the Hearing Officer correctly determined that:

- 1. The Employer did not, during the critical period, offer promotions to bargaining unit employees in an effort to, and with the intent to, persuade voters.
- 2. The Employer did not, during the critical period, regularly poll and interrogate bargaining unit employees about their Union support, up to and including within 24 hours of the opening of the polling period.
- 3. The Employer did not, during the polling period, poll and interrogate employees and engage in electioneering in the polling area and immediately before the employees entered the polling area.
- 4. The Employer did not, during the polling period, hold a captive audience meeting from 2:00 p.m. to 3:30 p.m., when the polling period was 2:00 p.m. to 4:00 p.m., in an effort to demonstrate to employees the Employer's perceived power and authority.

There is no legal basis under Section 102.67(c) for the Board to grant the instant Request for Review. The Request for Review does **not**: (1) raise a substantial question of law or policy; (2) raise any substantial factual issue that is clearly erroneous and prejudicial; (3) raise any conduct of the hearing or ruling that resulted in prejudicial error; or (4) raise any compelling reason for reconsideration of an important NLRB rule or policy. Rather, upon reading of the Request for Review, it is abundantly clear that Petitioner filed this appeal to rant and pound its chest in defiance of the well-established rules regarding employer conduct before an election and an employer's rights to free speech even during the course of an election. The Hearing Officer's recommendations to overrule Petitioner's objections are fully supported by decades of Board precedent and the unrefuted record evidence. Accordingly, the Petitioner's Request for Review

must be denied.

III. STATEMENT OF FACTS

A. The Center.

The Center is an independent living and personal care Center located in Chester, Pennsylvania. See Hearing Transcript, p. 71.³ The Center is run by Executive Director, David Kolesky, and his management team. See Tr., pp. 71-72. Mr. Kolesky's management team, among others, includes Business Office Manager Jackie Ala, and Dietary Supervisor David Walsh. See Tr., pp. 72-73. The Center also receives support from the corporate human resources team, including human resource representatives Rume "Joy" Azikiwe and Natalie Lentz. See Tr., pp. 108-109. Each of these individuals is considered a supervisor. See Tr., pp. 72-73.

B. The Petition and Campaign Period.

On or around May 11, 2012, Mr. Kolesky received notice from the NLRB informing him that a petition for a representation election had been filed by the Union. <u>See Tr.</u>, p.75. Ms. Lentz and Ms. Azikiwe subsequently were informed, and immediately scheduled a meeting with the Employer's managers regarding the upcoming campaign. <u>See Tr.</u>, p. 109.

Ms. Azikiwe and Ms. Lentz held the managers' meeting on May 15, 2012. <u>See Tr.</u>, p. 110. During the meeting, they informed the Center's managers that throughout the campaign, they were prohibited from threatening, interrogating, promising, or spying on employees in the context of their rights under the Act. (<u>i.e.</u>,"TIPS training.") <u>See Tr.</u>, p. 109. Consequently, all managers understood what they were allowed and prohibited from saying to potential voters during the campaign period. <u>See Tr.</u>, pp. 76, 91, 99 and 109.

During the campaign period, the managers who testified spoke in a lawful manner to

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³ Hereinafter referred to as "Tr."

potential voters. Mr. Kolesky told voters that "[voting] was important" and "all votes count." <u>See Tr.</u>, p. 77. Ms. Ala "gave [employees] facts . . . offered opinions and [let employees] know that it was important for them to vote." <u>See Tr.</u>, p. 92. Denise Johnson, a Director of Nursing from a sister center in Millville, New Jersey, spoke to employees and told them that their vote was "their choice" and "that it was confidential." <u>See Tr.</u>, p. 100. At no time during the campaign did any supervisor ask any employee how he or she intended to vote. <u>See Tr.</u>, p. 92. The Employer also held meetings for groups of employees to discuss the election; however the Employer did not conduct any group meetings within 24 hours of the election. See Tr., p. 121.

IV. ARGUMENT

There is no basis for granting the Union's Request for Review. The Hearing Officer's recommendations are not clearly erroneous, and there are no otherwise compelling reasons to grant the request for review.

A. There Is No Basis Upon Which to Grant the Request for Review Because the Report and Recommendation Does Not Contain Any Clearly Erroneous Decisions on a Substantial Factual Issue As Per Section 102.67(c)(2).

Even if Petitioner's Request for Review is not untimely, it is procedurally deficient under Section 102.67(d) because it does not provide page citations to the transcript in support of any of Petitioner's arguments. There are no citations whatsoever to support Petitioner's position. On this basis alone, the Request for Review must be denied.

In addition to the absence of citations, the Request for Review does not identify <u>any</u> clearly erroneous decisions on a substantial factual issue. Rather, Petitioner makes its claim with mere rhetoric, conjecture, and reference to factual allegations that are not in the record.

1. Petitioner Mischaracterizes the Record Testimony

There are numerous examples in the Request for Review of Petitioner taking liberties

with the record. Petitioner proffers that Mr. Kolesky, Ms. Ala, and Ms. Azikwe were "enlisted" to descend upon the Center to dissuade employees from voting for the Union. Nothing could be further from the truth. Mr. Kolesky and Ms. Ala work at the Center on a full-time basis. Petitioner's suggestion that Ms. Azikwe was "rarely" present at the Center or that she became a "fixture" in the weeks before the election is not supported by the record as no one testified about such facts. Petitioner's contention otherwise is disingenuous at best.

Petitioner also misstates the record evidence regarding Leroy Lawrence's questions about his eligibility for health benefits. Petitioner contends that Mr. Lawrence had been requesting health benefits "month after month" from September 2011 to June 2012. However, Mr. Lawrence testified that he approached his supervisor, Michael Pollard, in May 2012, about whether he was eligible for health benefits. See Tr., p. 31. Mr. Lawrence testified that Mr. Pollard resigned from the Center before anything was changed. See Tr., pp. 31, 37. In June 2012, Ms. Azikiwe visited the Center. See Tr., p. 116. Mr. Lawrence testified that he approached Ms. Azikiwe knowing that she worked in the corporate human resources department. See Tr., pp. 31 and 116. Mr. Lawrence told Ms. Azikiwe that he was concerned with the number of hours he had been working and his lack of benefits. See Tr., pp. 116. Ms. Azikiwe told Mr. Lawrence that she would investigate his complaint and get back to him. See Tr., p. 116.

Ms. Azikiwe investigated Mr. Lawrence's complaint and recognized that Mr. Lawrence was misclassified as a part-time employee. See Tr., p. 117. Misclassification of employees is a common issue in the industry, typically arising from unexpected staff change requirements resulting from attrition or leaves of absence. See Tr., p. 117. After discovering the misclassification issue, Ms. Azikiwe, as is her common practice, directed Mr. Kolesky and Ms. Ala to change Mr. Lawrence's status from part-time to full-time, retroactive to the beginning of

June 2012. <u>See</u> Tr., p. 118. Ms. Azikiwe then spoke to Mr. Lawrence to inform him that his status was properly changed. <u>See</u> Tr., p. 118. Mr. Lawrence testified, however, that he did not learn that he received the basic health insurance plan until after the election. See Tr., p. 35.

Petitioner's assertion that Ms. Azikwe was at the Center before the election to solicit grievances is another alleged "fact" that is not supported by the record. When Mr. Lawrence approached Ms. Azikwe about his health benefits, she was conducting a meeting regarding how negotiations worked. See Tr., p. 116. She was not there to inquire whether the employees had any issues for which they wanted to seek redress. See Tr. p. 116. The meeting was merely informative. Upon hearing information about the Employer's benefits, Mr. Lawrence decided to approach Ms. Azikwe to ask about his eligibility for health benefits based on the hours he had been working. See Tr. p. 116. No one testified at the hearing that Ms. Azikwe's purpose at the Center was to solicit grievances from employees or that she, in fact, did so. Petitioner's contention otherwise is patently false.

Also, Petitioner incorrectly claims that on the day of the election, Ms. Johnson told resident caregiver La'Keiya Hudson to "do the right thing" and encouraged her to vote. However, Ms. Johnson testified that she never told Ms. Hudson to "do the right thing." Tr., p.104. Moreover, Ms. Hudson testified that she "really wasn't paying attention" to anything that Ms. Johnson said. See Tr., pp. 12 and 16.⁴ Most importantly, Ms. Hudson admitted that no one asked her how she was going to vote. See Tr., pp. 25-26.

Petitioner's allegation that Mr. Kolesky pointed out "some" employees to be escorted to Ms. Ala's office on the day of the election is also not supported by the record. Ms. Wood testified that on the day of the election, she witnessed two employees being "called in" to speak

⁴ Ms. Johnson testified that the conversation with Ms. Hudson lasted no more than two minutes. <u>See</u> Tr., p. 101.

with Ms. Johnson. <u>See</u> Tr., p. 44. She stated that on the day of the election, she stood in the main lobby for two minutes and saw Mr. Kolesky nod to Ms. Johnson by the staircase. <u>See</u> Tr., p. 45 and 58-59. Ms. Wood claims that after Mr. Kolesky nodded, Ms. Johnson then approached <u>one</u> employee and led the employee to a hallway. <u>See</u> Tr., pp. 60 and 62. Ms. Wood, however, admitted that she did not hear the alleged conversation between Mr. Kolesky and Ms. Johnson, could not see where Ms. Johnson allegedly met with the employee, and did not hear the alleged conversation between Ms. Johnson and the employee if, in fact, a conversation occurred. <u>See</u> Tr., pp. 60, 62 and 64.

Likewise, Petitioner's statement that ten (10) employees were met with Ms. Johnson on the day of the election is not supported by the record. As the Hearing Officer found in the Report and Recommendation, only "two of these conversations occur[ed] within 24 hours of the voting." See Report and Recommendation, p. 10. Petitioner's assertion that Ms. Johnson spoke to 10 employees on the day of the election is simply untrue.

For these reasons, and the complete lack of transcript cites by the Petitioner, the Request for Review factual pattern is unworthy of credibility.

2. The Employer Did Not, During the Critical Period, Offer Promotions to Bargaining Unit Employees in an Effort to, and With the Intent to, Persuade Voters.

Petitioner's argument that the Employer offered Mr. Lawrence a promotion by correcting an administrative error that clarified his eligibility for health benefits should be denied. The record is clear that Mr. Lawrence was not promoted and that his eligibility for health benefits was determined after he approached Ms. Azikwe in June 2012. Accordingly, the Hearing Officer's recommendation to overrule Petitioner's objection should be affirmed.

Petitioner argues that Ms. Azikwe was present at the Center in June 2012 "to discuss the

Union and to see if there were areas in which the Employer could improve." <u>See</u> Request for Review, p. 5. However, there is no testimony in the record to support this assertion. Thus, contrary to Petitioner's contention, the purpose of Ms. Azikwe's visit to the Center is in dispute, and the dispute was correctly decided by the Hearing Officer, consistent with the record evidence.

Ms. Azikwe was present at the Center as a part of her regular duties as the Regional Human Resources Manager. After meeting with employees to discuss negotiations, Mr. Lawrence sought out Ms. Azikwe to ask his question about his eligibility for health benefits. Tr., p. 116. As described above, for the first time, Mr. Lawrence had asked the question the month before to Mr. Pollard, but Mr. Pollard resigned before getting back to Mr. Lawrence with an answer. Seeing an opportunity to ask Ms. Azikwe about it, Mr. Lawrence approached her to see if she could help. Tr., pp. 31, 116. In the normal course of her duties, Ms. Azikwe investigated the matter and determined that Mr. Lawrence was eligible and changed his status in the Employer's system retroactive to June 3, 2012, per past practice when the company discovers that employees are misclassified in error. Tr. pp. 116-17. Although the status change was retroactive, Ms. Azikwe did not tell Mr. Lawrence until after the election, and Mr. Lawrence testified that he did not become aware that he received the health benefits until after the election.⁵ See Tr., p. 35.

Moreover, the Hearing Officer's consideration of the fact that Mr. Lawrence approached Ms. Azikwe about his health benefits is appropriate. Petitioner misstates the purpose of Ms. Azikwe's presence at the Center to suit its argument. Ms. Azikwe was not there to solicit

⁵ Importantly, Ms. Wood testified that she became aware of the change in Mr. Lawrence's benefits, but she could not recall when she learned that. As Mr. Lawrence found out about the benefit after the election so one can easily conclude so did Ms. Wood. <u>See</u> Tr., p. 50. Mr. Lawrence did not testify that he shared the information about his health benefits with other co-workers, much less that he told them about it before the election. Petitioner's suggestion otherwise grossly mischaracterizes the testimony.

grievances from employees or to correct issues that they had. She was merely there to explain to the employees how negotiations work, and Mr. Lawrence approached her to ask about his health benefits. Again, the record does not support Petitioner's version of the facts. As the Hearing Officer determined, Ms. Azikwe's handling of Mr. Lawrence's inquiry was consistent with past practice, including the common nature of such classification discrepancies and the decision to make the health benefits retroactive to June 3, 2012. See Report and Recommendation, pp. 7-8. Further, Ms. Azikwe testified that even without the Union campaign, she would have investigated Mr. Lawrence's complaint and ultimately changed his employment status from part-time to full-time. See Tr., pp.116-17.

The Hearing Officer correctly found that the health benefit conferred on Mr. Lawrence did not constitute objectionable conduct even if it did occur within the critical period. The health benefit conferred was the Employer's basic coverage available to almost all of the other eligible employees at the Center. Thus, it cannot be said that Ms. Lawrence received an enhanced or unusual benefit that could have the effect of sway his vote. Further, Mr. Lawrence did not testify that the receipt of the health benefits swayed his vote. Indeed, given that he did not learn about the receipt until after the election, his choice could not have been swayed.

Moreover, the Union presented no evidence which even suggests that the "benefit" the Center granted to Mr. Lawrence was granted in any way to influence his vote or that those benefits did influence his vote. In fact, the record evidence demonstrates that Mr. Lawrence did not receive the "Cadillac plan" of health benefits from the Center, but simply received the "standard plan, single coverage" for health insurance- the lowest costing tier to both him and the Center. See Tr., p. 119. Further, because Mr. Lawrence allegedly worked "full-time" hours since the inception of his employment, Ms. Azikiwe reasonably could have granted him

retroactive benefits to October 2011. Instead, Ms. Azikiwe followed her normal practice and granted him retroactive benefits to the beginning of the month. See Tr., pp. 32 and 118. The benefit granted to Mr. Lawrence was neither granted for the purpose of influencing his vote in the election nor of a type reasonably calculated to have that effect. In fact, the Union presented no testimony even suggesting the benefit influenced his vote or anyone else's vote. Accordingly, Petitioner's Request for Review regarding Objection 2 should be denied.⁶

3. The Employer Did Not, During the Critical Period, Regularly Poll and Interrogate Bargaining Unit Employees About Their Union Support, Up To and Including Within 24 Hours of the Opening of the Polling Period and the Employer Did Not, During the Polling Period, Poll and Interrogate Employees and Engage in Electioneering in the Polling Area and Immediately Before the Employees Entered the Polling Area.

Petitioner's arguments that employees were unlawfully interrogated on election day should be rejected. The record shows that the Employer did not hold any captive audience meetings with groups of employees on the day of the election. Under well-settled Board law, one-on-one meetings with employees that simply encourage employees to vote are not unlawful. The record does not suggest that the Employer interrogated any employees much less establish any such conduct. Accordingly, the Hearing Officer's recommendation to overrule Objections 3 and 4 should be affirmed.

Even if, for example, the alleged conversation between Ms. Ala, Ms. Johnson and Ms. Hudson could be categorized as "interrogation," the Union cannot possibly argue that such an interrogation was coercive. In <u>Ehloe Medical Center</u>, 178 L.R.R.M. 1123 (2005), the Board

⁶ Petitioner's contention in Footnote 5 of the Request for Review that the Hearing Officer ignored facts erroneously is false. Petitioner rehashes its assertion that Mr. Lawrence had been seeking health benefits for 10 months, when the record – as described above – plainly shows otherwise. Mr. Lawrence approached Mr. Pollard in May 2012, only 1 month before he spoke to Ms. Azikwe who resolved the matter consistent with the way she handles other administrative errors. Then, in a conclusory way, Petitioner contends that Mr. Lawrence's must have been impacted by his change in status, but this manufactured rationale is belied by the fact that Mr. Lawrence himself did not testify that his vote was affected by the change in status and the fact that no other employee testified that their votes were affected by Mr. Lawrence's change in status.

determined that a conversation between a nurse manager and three employees during a disciplinary meeting was not coercive even where she asked the employees why they believed that they needed a union. Here, neither Ms. Ala nor Ms. Johnson confronted Ms. Hudson about her Union affiliation, and Ms. Hudson testified freely that "she really wasn't paying attention" to anything that Ms. Ala or Ms. Johnson said. See Tr., p. 16. No evidence exists showing that the Employer engaged in any conduct that could be deemed coercive interrogation. No witness testified that he or she was improperly interrogated or coerced, therefore the Hearing Officer's recommendation to overrule Objection 3 should be affirmed.

As noted above, Petitioner's assertion that the Hearing Officer found that Ms. Johnson held ten (10) one-on-one meetings on the day of the election is patently false. The Hearing Officer clearly found that she had two such discussions. See Report and Recommendation, p. 12. The Hearing Officer concluded that Ms. Ala had five or six such discussions within 24 hours of the election. But again, they were lawful one-on-one discussions under Business Aviation, 202 N.L.R.B. 1025 (1973), and there is no evidence in the record to suggest that the Hearing Officer's conclusion about them is clearly erroneous.

Petitioner's reliance on Southern Bag Corp., Ltd., 315 N.L.R.B. 725 (1994) and 2 Sisters Food Group, Inc., 357 N.L.R.B. No. 168 (2011) is misplaced. The one-on-one discussions held at the Center were significantly different from the discussions described in Southern Bag where the company's leadman "encourage[d] the employees to vote against the Union" in the course of his discussions with them. 315 N.L.R.B. at 725. The record is clear that no Employer representative at the Center, including Ms. Ala and Ms. Johnson, ever encouraged employees to vote against the Union. Likewise, the employer conduct in 2 Sisters Food Group is easily distinguishable from the instant case. In 2 Sisters, the employer discharged a key union

supporter four days before the election, distributed t-shirts and beanies on the day of the election, informed employees on the day of the election that a company in another state had gone bankrupt because of the union, and restricted union representative access to the polling place in advance of the election. 2011 NLRB LEXIS 810, at *24, *34. In the instant case, the record is void of any conduct of the nature described in the <u>2 Sisters</u> decision. Ms. Ala and Ms. Johnson conducted no polling of employees and certainly did not take any employment action against employees for their union activities. The record is clear that the Employer's one-on-one meetings with employees, even the ones on the day of the election were lawful.

Finally, there is no testimony from the hearing to support Petitioner's assertion that Ms. Ala or Ms. Johnson, or any other Employer representative, distributed any flyers during any of the lawful one-on-one discussions. Additionally, as the Hearing Officer concluded, these one-on-one discussions do not constitute "employer speeches" because none of the comments made by Ms. Johnson or Ms. Ala were coercive or reasonably interfered with the employees' expression of their true choice in the election. As stated above, there was no testimony that the Employer engaged in any unlawful conduct. Accordingly, the Hearing Officer's recommendation to overrule Objection 4 should be affirmed.

4. The Employer Did Not, During the Polling Period, Hold a Captive Audience Meeting from 2:00 p.m. to 3:30 p.m., When the Polling Period Was 2:00 p.m. to 4:00 p.m., in an Effort to Demonstrate to Employees the Employer's Perceived Power and Authority.

Finally, Petitioner's argument that the Employer's in-service meeting on the day of the election was unlawful should be rejected. The Petitioner, as detailed below and in the Hearing Officer's Report and Recommendation, presented no evidence suggesting that the in-service was held in violation of the Act. Therefore, the Hearing Officer's recommendation to overrule Objection 5 should be affirmed.

In-service meetings at the Center are scheduled by Mr. Kolesky in January of each year. See Tr., p. 80. Pursuant to Department of Public Welfare regulations, between 12 and 13 inservice trainings are required each year. See Tr., pp. 80-81. The in-services are held one pay-day per month to maximize attendance, however, attendance at the in-service meetings is not mandatory. See Tr., pp. 48 and 79-80. If an employee does not attend an in-service, however, the employee may be required to complete the in-service through self-study. See Tr., pp. 85-86. On the day of the election, an in-service for employees was conducted at the Center between 2:00 p.m. and 3:00 p.m. This in-service provided training to employees on how to properly deal with dementia patients. See Tr., p. 86. Jackie Geiger, an Executive Director from a different center, conducted the meeting and made no mention of either the election or the Union throughout the meeting. See Tr., pp. 81-82. Ms. Hudson testified that she attended the training and Ms. Wood testified that she did not. See Tr., pp. 18-19 and 49. Employees were permitted to leave the meeting to vote. See Tr., p. 82.

Prior to the scheduling of the election, management briefly discussed postponing the inservice to a different day, but decided against it because of the importance of the training. See Tr., p. 81. Management determined that the in-service could be held without interfering with the election. See Tr., p. 81. In an abundance of caution, however, before the polls opened on election day, Employer representatives spoke to the Board Agent and Union Representative Barbara Bohanon about the in-service scheduled for that day. See Tr., pp. 112-113. Specifically, the Employer informed union representatives that the Center held non-mandatory monthly in-service training sessions for its employees on the last pay-day of each month, that the training scheduled for the day of the election dealt with caring for dementia patients, and at the

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⁷ Ms. Hudson testified that she was not sure if they were mandatory. <u>See</u> Tr., pp. 24, 27.

meeting, there would be no mention of the union election. <u>See</u> Tr., pp. 112-113. Both union representatives agreed to the in-service meeting going forward on the day of the election. <u>See</u> Tr., pp. 112-113.

The Board prohibits <u>election speeches</u> to massed assemblies of employees in the 24-hour period before an election. <u>Peerless Plywood Co.</u>, 107 N.L.R.B. 427 (1953). The <u>Peerless rule</u>, however, is aimed only at "captive audience" type meetings where either the employer or the union is given an unfair advantage by delivering the "last word in an organizing campaign, thereby overriding all other arguments made through various campaign media. <u>Id.</u> A meeting held to go over general work protocols and procedures does not fall within the sort of meeting prohibited by the Board in <u>Peerless Plywood</u>. Here, the in-service meeting held on election day is not violative of the Act because, quite simply, it was not a "captive audience meeting."

In <u>CEVA Logistics U.S., Inc.</u>, 357 NLRB No. 60 (2011), the Board overruled an election objection alleging that the employer violated the Act in holding a mandatory employee meeting dealing with safety issues on the day of the election, despite the Union's contention that employees would have the impression that the employer controlled election process. The Board reasoned that where the employer announced its meeting before the election was scheduled and where there was no evidence that employees were coerced to vote by their mere attendance at meeting, such a meeting did not constitute violation of the Act. <u>CEVA Logistics U.S., Inc.</u>, 357 NLRB No. 60 (2011).

Similarly, in the instant case, the meeting held by the Employer on the day of the election was not a "captive audience meeting," but a meeting training nurses how to deal with dementia patients. Further, the meeting was scheduled by Mr. Kolesky in January 2012, prior to the filing of the election petition. See Tr., p. 80. Finally, the Union presented no evidence suggesting that

the regularly scheduled in-service meeting interfered with the election in anyway. First, attendance at the meeting was entirely voluntary. <u>See Tr.</u>, pp. 79-80. In fact, Ms. Wood testified that she did not attend the meeting. <u>See Tr.</u>, p. 49. Moreover, no record evidence suggests that the meeting prevented any employee from voting. Rather, Ms. Hudson testified she attended the in-service and voted. <u>See Tr.</u>, p. 19. Finally, neither the Board representative nor the Union representative objected to the meeting on the date of the election. <u>See Tr.</u>, p. 112-113.

Petitioner's reliance on Rivers Casino, 356 N.L.R.B. No. 142 (2011), is misplaced. In Rivers Casino, a supervisor gave 12-15 employees working on the graveyard shift an additional break on the day of the election that was not provided to employees on any of the other shifts. The Board determined that the break was provided to give the employees the opportunity to vote outside the agreed-upon election procedures. The Board determined that the supervisor's decision unlawfully created the impression that the company controlled the election process. 2011 NLRB LEXIS 187 at *10-*13. The in-service meeting held on the day of the election at the Center is a far cry from the extra break provided by the supervisor in the Rivers Casino decision. As plainly set forth in the record, the in-service meeting was part of a regular monthly set of meetings provided by the Center as required by law and scheduled in January. Tr., pp. 78-80. They were not mandatory and were offered to employees as they are each month. Tr., pp. 78-81. There was no special benefit tied to the in-service meeting, and it was not offered as a means of controlling the election process. It was part of a regularly scheduled series of offerings to help train employees in compliance with the Center's obligations under the law. Moreover, there is no evidence to suggest, much less establish, that any employees' ability to vote were affected by the scheduling of the in-service meeting.

Because the in-service training was not a "captive audience meeting" and no evidence demonstrates that the meeting impacted any employee's ability to vote, the Hearing Officer's recommendation to overrule Objection 5 should be affirmed.

V. CONCLUSION

For the reasons stated above, the Board should affirm the Hearing Officer's Report and

Recommendation to overrule the Union's objections to the election and deny, in toto, Petitioner's

Request for Review. Accordingly, the Employer respectfully requests that the results from the

election held on June 21, 2012 be certified.

Dated: October 5, 2012.

Respectfully submitted,

/s/ Gregory S. Richters

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5th day of October, 2012, a true and correct copy of the foregoing EMPLOYER'S STATEMENT IN OPPOSITION TO REQUEST FOR REVIEW OF DISTRICT 1199C, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, AFSCME, AFL-CIO was served on the following by the method designated:

Office of Executive Secretary (Filed Electronically)
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570

Lance Geren (*Via U.S. Mail*) FREEDMAN AND LORRY, P.C. 1601 Market Street, 2nd Floor Philadelphia, PA 19103

Dorothy L. Moore-Duncan, Regional Director (*Via U.S. Mail*) National Labor Relations Board Region Four 615 Chestnut Street, 7th Floor Philadelphia, PA 19106

/s/ Gregory S. Richters
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